

Approved 2/7/07

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
November 1, 2006**

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, PB Attorney Greg Cunningham, CEO Scott Bickford and Secretary Deborah Sealey

Board Absent: None

1. Call to Order: Chairman Remian called the meeting to order at 7:00 pm.

2. Minutes of 10/4/06:

ACTION: Mrs. Kalloch made a motion, seconded by Mr. Ellis, to approve the minutes of the 10/4/06 meeting.
Carried 5-0-0

3. Amendment to Meduncook Plantation Subdivision, Lot #26, Map 5, Portion of Lot #84: James Tower introduced himself as a registered engineer in the state of Maine, owner of Engineering Dynamics and sole member of Cushing Holdings LLC and Last Resort Holdings LLC. He presented a plan proposing a Lot #26, consisting of 1.69 acres, connected to a ROW; he also pointed out two nearby retained parcels of land, one 35.3 acres and the other .75 acre. Mr. Tower also submitted a test pit log and the septic design for the site. He said he felt he had met the requirements of both the Subdivision Ordinance [SO] and the Shoreland Zone Ordinance [SZO] as pertained to creation of a lot and its addition to a subdivision. The developer pointed out Note 9 on his plan, edited at the CEO's request, concerning the fact that any building located more than 2000' from a fire pond would have a residential fire suppression system. Mr. Tower noted that none of these drawings was stamped or dated by a surveyor, but all would be prior to signing by the Board members.

Chairman Remian said the PB had asked for a 250' SZO buffer, which was not shown on the plan. Mr. Tower said it would be added. Mrs. Kalloch asked if the old road was recorded and Mr. Tower pointed it out on the plan. He said right now he was focused on Lot #26 but promised that all PB requested changes, such as removing the old road, would be made after the moratorium. Mrs. Kalloch then asked for clarification of the Lot #26 line. Mr. Muddle asked if, by approving the lot, the PB was not dealing with the ROW. Mr. Cunningham said he thought they could not be approved separately. He added that the SO required a minimum of 150' of frontage, which Lot #26 did not have. Also at issue, he said, was the SO provision that a lot without legal access could not be approved. Mr. Cunningham said the defined access was a depicted ROW on the land. If the lot was approved, a road would be put through the ROW, causing a problem because the road would be in a Resource Protection [RP] area.

Mr. Ellis asked if that meant the PB should consider the land use application first. Mr. Cunningham responded that it would be necessary to do the shoreland analysis first and referred to an earlier meeting when all parties, including Mr. Tower's attorney, decided it was better to review the subdivision amendment prior to considering the land use application. Mr. Cunningham said he thought the subdivision and shoreland analyses should be done simultaneously. Mr. Muddle said he was having trouble understanding the frontage issue and Mr. Cunningham explained that the frontage shown was on a theoretical way, rather than the actual way required. Mr. Tower said he interpreted the SO to say a lot having frontage on a way must have 150' of frontage. If not on a way, then it did not need any frontage, he said. Mr. Cunningham agreed this was one possible interpretation of the SO, but this would mean that adequate frontage was required only if there were any frontage at all, which seemed counterintuitive. Mr. Tower pointed out that Lot #4 in the same subdivision had no frontage. Mr. Cunningham said, in that case, that a private way to a wharf parking area was depicted. Mr. Tower countered that the SO did not say anyone had to be able to drive to a lot. CEO Bickford said that the roads and driveways section in the SZO disputed that assertion. Mr. Cunningham said he did not see that it required a road or driveway.

Mr. Remian asked Mr. Cunningham for guidance and the attorney said the primary issues were Sections 8.2 and 9.2. Mr. Tower said no lot in the subdivision had frontage on a private way, but rather on a ROW. Mr. Ellis asked how Lot #26 was different from the other lots, which ended where the ROW started. Mr. Cunningham said it was different because, in the case of Lot #26, no travel way was depicted within the ROW. Mr. Tower said the

circumstances were the same and, when Mr. Cunningham asked why a travel way was not depicted for Lot #26, Mr. Tower said he would get to that. There followed a lengthy discussion concerning definitions of way, road and ROW and interpretations of the ordinance language. Mr. Cunningham said Mr. Tower's plan depicted the intent to develop in a RP zone, which the PB would be approving if it approved the plan.

Mr. Remian said the fact that there was a 50' ROW on the plan made him suspicious of intent. He asked why the ROW was there and Mr. Tower said it was because he chose to put it there. Mr. Ellis said the PB had once told Mr. Tower that if his plan did not have a road on it, the PB could review it as an addition to the subdivision. Mr. Remian stated that adding land would be no problem, but adding a lot would have requirements. Mr. Tower recollected the problem was that a roadway was depicted within a ROW; he had removed the road to get rid of the problem. Mr. Muddle asked if a lot had to abut a subdivision in order to be added to it. Mr. Cunningham replied that it was not necessary, though typically a SO would have a frontage requirement so the road leading to a lot outside the subdivision would require frontage on the new lot. He said if the PB chose to approve Lot #26 with only a ROW access on the subdivision plan, a finding that the PB was not approving development within the RP district should be included. Mr. Cunningham asked how a subsequent request to build a road through the approved ROW could be denied.

Mr. Tower said he and the Board had the same conversation back in March, when it was decided that "permitted" and "permit-able" were not the same and he needed permitting. He said since then he and the Board had since then been dancing around the question of reviewing the use permit or subdivision amendment first. Mr. Cunningham asked why, in those eight months, Mr. Tower had not provided the information requested at the March meeting regarding Lot #10; the attorney said he was concerned because the new plan submitted looked like an end run. Chairman Remian agreed that the holdup had been that the Board had not received information it had requested several times.

Mr. Tower then provided the Board with a road plan that he thought was viable and spent considerable time discussing its details and ramifications. This road would exceed 500' in length, which Mr. Cunningham said would not be allowed by the SZO. A 16' wide driveway within the 50' ROW was also discussed.

ACTION: Mr. Kiskila made a motion, seconded by Mr. Remian, that Mr. Tower come back with a revised site plan at the next meeting.
Carried 5-0-0

Mr. Tower said he would prefer a vote this evening. In lieu of that, he would like to bring the revised plans to the Town Office, in three or four days, for the members to review and sign at their convenience. Mr. Cunningham suggested that the Board provide the developer with a list of requested changes if the issue was to be postponed to the next meeting. It was decided that all review criteria would be considered at the next meeting since there had been considerable time and many changes since some had been voted on. In the following discussion*, the Board listed the following changes:

1. A new site map depicting the road change (transition from road to driveway)
2. Depict 250' boundary of the shoreland zone
3. A note clearly stating it is approved as a driveway only
4. A 16' wide driveway, starting at the property line, not to exceed 500' in length
5. Depict storm water runoff and plunge pools
6. A note stating that a waiver is granted from the SO definition of "driveway" in order for the driveway to serve up to 3 lots; however, the driveway will meet all SZO standards
7. Submit the DEP permit approvals
8. RP depicted on the plan
9. A note indicating the PB made a finding that there were no reasonable alternative routes outside RP
10. The plan will show Lots #10 and #26 only.

4. Application for Robbins Mountain Subdivision, Map 5, Lots #84, #85 & #86: Mr. Tower said that changes had been made to the drawing submitted and more changes would be coming. He said he had moved the storm water wet pond further from the road and might be able to eliminate it. He also had shown a rearrangement of the parking lot and was making other changes in response to comments at the public hearing. Mr. Remian said the PB had asked for a financial capacity letter but what it had received from the bank was insufficient.

5.Adjournment: Mr. Kiskila made a motion, seconded by Mrs. Kalloch, to adjourn the meeting at approximately 9:30 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey

Addendum:

*At the 12/6/06 meeting, Mr. Muddle said the secretary had not adequately detailed the 11/1/06 discussion concerning the fact that the Board had agreed, though no vote was taken, that the route being shown by Mr. Tower did not have a reasonable alternative outside the RP. Please see Note #9 under agenda Item #3 above and listen to the tape to hear the complete discussion.